

REMARKS

The Restriction contends that the present application contains the following allegedly distinct inventions: Group I (claims 1-10), Group II (claims 11-22), and Group III (claims 23-27). Applicants elect, with traverse, the Group I claims (claims 1-10) for prosecution in the present application. For the following reasons, applicants request that the Restriction be withdrawn and all pending claims examined together in the present application.

I. Groups I and II

The Restriction contends that Groups II and I are related as a combination and a subcombination, respectively. Subject matter related in this manner are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) the subcombination has utility by itself or in other combinations. MPEP § 806.05(c), p. 800-42 and 43 (2001).

With respect to the first requirement under MPEP § 806.05(c), the Restriction contends that "the combination lacks a fluid connection between probes and vacuum source." This contention is incorrect. Claim 11 of Group II (the "combination") recites a "first probe being connectable to a vacuum source" so that the first probe can pick "up one or more seeds," and a "second probe being connectable to a vacuum source" so that the second probe can pick "up one or more seeds." Although not expressly recited, the connections of the probes in claim 11 inherently include a fluid connection to the vacuum source to allow the probes to pick up seeds.

Further, even if the "combination" and the "subcombination" were shown to be distinct (which they are not), a restriction is proper only when the Examiner can show by appropriate explanation one of the following: (1) each subject has a different classification; (2) each subject is shown to have a separate status in the art (this may be shown by citing patents); or (3) where it is necessary to search for one of the distinct subjects in places where no pertinent prior art to the other subject exists. MPEP § 808.02(A)-(C), p. 800-48 (2001). For the reasons provided below, none of the requirements for restriction as set forth in MPEP § 808.02 have been met.

The first requirement is not satisfied because the claims of both Groups I and II have been classified in class 47, subclass 1.01P.

As to the second requirement, the Examiner has not shown that the respective subject matter of Groups I and II have acquired separate status in the art.

As to the third requirement, the Examiner has only made the conclusory statement that "the search required for Group I is not required for Group II." As required by MPEP § 808.02, the Patent Office must show by an appropriate explanation why it is necessary to search for one of the groups in places where no pertinent art to the other group exists. The fact that both groups have the same classification indicates that a search for the subject matter of Group I would be highly relevant to the subject matter of Group II.

Since the classification is the same, the field of search is the same, and there is no indication of separate future classification, restriction between the subject matter of Groups I and II is improper. MPEP § 808.02, p. 800-48 (2001).

Accordingly, the restriction of Groups I and II should be withdrawn, and action to such end is requested.

II. Groups I and III

Groups I and III were restricted under MPEP § 806.05(d) allegedly as being subcombinations usable together in a single combination. A restriction under MPEP § 806.05(d) is proper only when the Examiner can show by appropriate explanation one of the following: (1) each subject has a different classification; (2) each subject is shown to have a separate status in the art (this may be shown by citing patents); or (3) where it is necessary to search for one of the distinct subjects in places where no pertinent prior art to the other subject exists. MPEP § 808.02(A)-(C), p. 800-48 (2001).

Again, the Examiner has only provided a conclusory statement that the restriction is proper because "the search required for Group I is not required for Group III." As required by MPEP § 808.02, the Patent Office must explain why it would be necessary to search for art pertaining to one of the groups in places where no pertinent art to the other group exists. The fact that both groups have the same classification indicates that a search for the subject matter of Group I would be highly relevant to the subject matter of Group III. Accordingly, the restriction of Groups I and III should be withdrawn, and action to such end is requested.

III. Groups II and III

The Restriction contends that Groups II and III are related as subcombinations usable together in a single combination. To satisfy the requirements under MPEP § 808.02, the

Examiner contends that the restriction is proper because "the search required for Group [II] is not required for Group III." This conclusory statement does not satisfy the requirement that the Patent Office explain why it would be necessary to search for art pertinent to one of the groups in places where no pertinent art to the other group exists. The fact that both groups have the same classification indicates that a search for the subject matter of Group II would be highly relevant to the subject matter of Group III. Accordingly, the restriction of Groups II and III should be withdrawn, and action to such end is requested.

IV. No Reasonable Burden

Applicants respectfully submit that all pending claims filed are sufficiently related to each other such that a thorough search and examination of them all can be made without serious burden. Therefore, as required by MPEP §803, "the Examiner must examine [the entire application] on the merits, even though it includes claims to independent or distinct inventions."

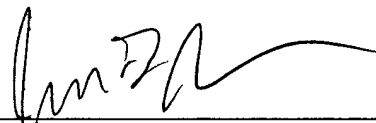
V. Conclusion

For at least the foregoing reasons, the Restriction should be withdrawn, and Groups I, II, and III should be examined together in the present application. The Examiner is invited to call the undersigned if there are any issues remaining concerning this matter.

Respectfully submitted,

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